92-2043

Supreme Court, U.S.
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NO._____

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1992

JUDITH CHILDS, Executrix of the Estate
of John Childs, Deceased
and
RANDY HOOD,

Petitioners

VS.

STATE OF OKLAHOMA ex rel
OKLAHOMA STATE UNIVERSITY,

Respondent

PETITION FOR WRIT OF CERTIORARI

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June 7, 1993 ATTORNEY FOR PETITIONERS

QUESTIONS PRESENTED FOR REVIEW

1. Whether Okla. Stat. Tit. 51, §155(14) (1988) of the Oklahoma Governmental Tort Claims Act is intended to govern non-Oklahoma residents covered by workers' compensation law of a sister state and, if so, whether such statute as currently construed is an overreaching of its immunity power and thus unconstitutional.

2. Whether Okla. Stat. Tit. 51, §155(14) (1988) of the Oklahoma Governmental Tort Claims Act violates U.S. Const. art. I, §8, cl. 2 and 3 by creating an undue burden on interstate commerce.

3. Whether Okla. Stat. Tit. 51, §155(14) (1988) of the Oklahoma

Governmental Tort Claims Act violates U.S. Const., amend. XIV, §1 with respect to due process.

4. Whether Okla. Stat. Tit. 51, §155(14) (1988) of the Oklahoma Governmental Tort Claims Act violates U.S. Const. amend. XIV, §1 and U.S. Const. art. IV, §2, cl. 1 with respect to equal protection.

5. Whether Okla. Stat. Tit. 51, §155(14) (1988) of the Oklahoma Government Tort Claims Act violates U.S. Const., art. IV, §1 with respect to full faith and credit.

LIST OF PARTIES

Petitioner certifies that the following is a complete list of the parties and persons interested in the outcome of this appeal:

a. Judith Childs, Executrix of the Estate of John Childs, Deceased, Petitioner;

b. Randy Hood, Joint-Petitioner;

c. Roger D. Sanders, Luke Motley, IV, Sanders, Mumm, O'Hanlon & Motley, P.C., attorneys for Petitioners;

d. The State of Oklahoma, ex rel. Oklahoma State University, Respondent; and

e. Jeff Mixon, Assistant Attorney General, attorney for Respondent.

Pursuant to Supreme Court Rule 12.2., the issues involved with respect to Judith Childs and Randy Hood against The State of Oklahoma, ex rel. Oklahoma State University are identical such that

a single Petition for Writ of Certiorari covering both cases is presented.

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REFERENCE TO PRIOR OPINIONS AND STATEMENT OF JURISDICTION

The official order granting Respondent's Motion for Summary Judgment at the trial court level is located in the Appendix. This order was entered on April 17, 1991, from which Petitioner appealed to the Supreme Court of the State of Oklahoma.

The order upholding the trial court's ruling is located in of the Appendix. The order handed down from the Supreme Court of the State of Oklahoma was entered on March 8, 1993, from which Petitioner seeks a Writ of Certiorari. The deadline for filing the Petition for Writ of Certiorari is June 7, 1993.

This Supreme Court has appellate jurisdiction to hear this Petition for

Writ of Certiorari pursuant to Art. III, §2, cl. 1 and cl. 2 of the U.S. Constitution. Additionally, the Oklahoma Supreme Court has decided an important question of federal law which has not been, but should be, settled by this Court. Specifically, this Petition for Writ of Certiorari deals with the constitutionality of a state's Governmental Tort Claims Act.

APPLICABLE CONSTITUTIONAL PROVISIONS AND STATUTES

A. **51 O.S. Supp. 1988, sec. 153. Liability - scope - exemption - exclusivity.**

The state or a political subdivision shall be liable for loss resulting from its torts or the torts of its employees acting within the scope of their employment subject to limitations and exceptions specified in this Act and only where the state or political subdivision, if a private person or entity, would be liable for money damages under the laws of this state. The state or a political subdivision shall not be liable under the

provisions of this act for any act or omission of an employee acting outside the scope of his employment.

The liability of the state or political subdivision under this Act shall be exclusive and in place of all other liability of the state, a political subdivision or employee at common law or otherwise.

B. **51 O.S. Supp. 1988, sec. 155. Exemptions from liability.**

The state or a political subdivision shall not be liable if a loss or a claim results from:

Sec. (14) Any claim covered by any workers' compensation

act or any employers'

liability act.

C. U.S. Const. art. I, §8, clause 2.

D. U.S. Const. art. I, §8, clause 3.

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I. Vernon's Ann. Civ. Stat. art. 8308-4.01.

J. Ok. Const. art. 23, §7.

K. Oklahoma Governmental Tort Claims Act, §155(14), amended 1988.

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VS.

STATE OF OKLAHOMA ex rel
OKLAHOMA STATE UNIVERSITY,

Respondent

STATEMENT OF THE CASE

This case stems from the wrongful death and personal injury of two Texas residents caused by the negligence/gross negligence of an employee of the State of Oklahoma. The accident occurred in the State of Oklahoma during a business

trip from Texas. Petitioners are (a) the widow of John C. Childs killed by the vehicle driven by an employee of the Oklahoma State University and (b) Randy Hood, also a Texas resident who sustained severe personal injury.

Childs and Hood were traveling to Oklahoma from their place of business in Texas in order to consult with a customer about some problems with a product manufactured by their business employer. After having concluded the business in Oklahoma, Childs and Hood were traveling back to their residences located in Texas when they were involved in the automobile accident. Petitioners brought a wrongful death action and personal injury action against the State of Oklahoma to recover damages. (Tr.

115). The two suits were consolidated for purposes of appeal and are presented together herein.

Oklahoma raised an immunity shield under Okla. Stat. Tit. 51, sec. 155(14) (1988) of the Oklahoma Governmental Tort Claims Act, as amended in 1988. The trial court granted Oklahoma's motion for summary judgment on the grounds that Petitioner was barred by sec. 155(14), which provides that any person covered under any workers' compensation Act or employee's liability Act cannot bring an action against the State of Oklahoma for damage caused by the wrongful conduct of its employees. (Tr. 76, 154, 188).

Petitioners filed an appeal with the Oklahoma Supreme Court arguing that sec. 155(14) was not intended to bar a

non-resident covered by any workers' compensation act because such an interpretation would be unconstitutional. Specifically, barring a non-resident simply because he/she happens to be covered by a workers' compensation act would violate the interstate commerce clause, equal protection clauses, due process clause, and full faith and credit clause of the United States Constitution.

The Oklahoma Supreme Court affirmed the trial court's ruling. Petitioners seek this Writ of Certiorari which asks this Court to decide whether a state may extend its sovereign immunity to affect individuals outside its territorial boundaries and whether sec. 155(14), which according to the Oklahoma Supreme

Court bars (1) a non-resident of Oklahoma, (2) who is not employed by the State of Oklahoma, and (3) who may be covered by a workers' compensation law of another state, from bringing a suit for personal injury against the State of Oklahoma for the wrongful conduct -- crossing the center line while speeding -- of its employee.

ARGUMENT

The overwhelming majority of states have waived their immunity for the negligence of their employees in situations such as Petitioners' without including an express exception for claims covered by workers' compensation law. Individuals injured in the course and scope of their employment by

negligent state employees are free to sue the state as a third party tortfeasor. This right to proceed against a third party is a standard part of most workers' compensation law. The only exception is when the state is both the employer and the third party tortfeasor. In this situation, a bar to recovery for employees of a state injured by another state employee of the same state makes sense. Such a limitations would avoid a situation where a state could be subjected to double recovery based upon its status as (1) the employer under workers' compensation, and (2) a governmental entity under a tort claims act. In most instances, however, situations involving state employees suing the state for

injuries sustained on the job are covered within the various workers' compensation statutes by virtue of the exclusive nature of the remedy.

However, eight states (Iowa, Kentucky, Maryland, Nebraska, Mississippi, South Carolina, South Dakota, and Tennessee) have specifically included a workers' compensation exception within their tort claims act which precludes their own employees from double dipping through both workers' compensation and the tort claims act. The scope of these provisions is clearly within the parameters of the United States Constitution and serves to promote a compelling state interest to prevent exposure to double liability. Unfortunately, Oklahoma seeks to expand

this concept to unconstitutional proportions.

According to the Oklahoma Supreme Court, if an individual travels within the State of Oklahoma in the course and scope of his employment is seriously injured or killed by a state employee, he or she is prohibited by Okla. Stat. Tit. 51, sec. 155(14) (1988) from recovering damages from the State of Oklahoma. This is true in Oklahoma only because he/she happens to be covered by any workers' compensation law, regardless of the benefit received from workers' compensation. This interpretation does not serve a legitimate public interest. It does not prevent double exposure for the state but simply discriminates against working

individuals travelling in Oklahoma by stripping them of their right to recover damages from a third party tortfeasor. As one is well aware, workers' compensation is limited and in the vast majority of cases will not adequately compensate a victim for their loss, particularly serious personal injury or death. The deprivation of the right to sue the third party tortfeasor (Oklahoma) is the price one pays to conduct business in the State of Oklahoma.

Out of all fifty United States, only two states, West Virginia and Oregon, have workers' compensation exception language within their tort claims act similar to Oklahoma. Petitioners would show that the broad

language in the Oklahoma workers' compensation exception does not extend to non-residents of Oklahoma but should be construed to prohibit double exposure of a state as both an employer and as a governmental entity under the act. Such language was never meant to deprive individuals from suing the state as a third party tortfeasor after the state has waived its immunity and consented to suit. Expansion of the workers' compensation exception to the breadth desired by Oklahoma flies in the face of the safeguards and protections provided by the United States Constitution.

This Court must review Okla. Stat. Tit. 51, sec. 155(14) (1988) in order to determine whether Oklahoma has overstepped its bounds with respect to

the enactment of this limitation from liability under its tort claims act.

Okla. Stat. Tit. 51, sec. 155(14) (1988) must be strictly scrutinized in order to settle the important federal question of how far a state can go in shielding itself from liability. Is the statute, as currently construed by the Supreme Court of Oklahoma, unconstitutional?

The history of the workers' compensation exception, as well as it effects on interstate commerce, due process, equal protection, and full faith and credit as provided in the United States Constitution must be strictly scrutinized in order to determine where to draw the line. Has Oklahoma gone too far by enacting this

statute and thereby overstepping its territorial bounds and imposing its will on citizens of other states without their consent. The Supreme Court of Oklahoma says no.

At least eight states have expressly limited the workers' compensation exception to avoid double exposure as an employer and as a governmental entity. The vast majority of states does not include a workers' compensation exception within their tort claims act choosing instead to rely on the practical limitation imposed within the fundamental premise of workers' compensation law. Only two states use language similar to Oklahoma. However, such language cannot be given the

breadth sought by Oklahoma without creating an unconstitutional statute.

It is up to this Court to determine the constitutional limitations regarding sovereign immunity in order to insure that states remain within the United States Constitutional boundaries with respect to the exercise of their sovereign powers.

RESTATEMENT OF QUESTION NO. 1

Whether Okla. Stat. Tit. 51, sec. 155(14) (1988) of the Oklahoma Governmental Tort Claims Act is intended to govern non-Oklahoma residents covered by workers' compensation law of a sister state and, if so, whether such statute as currently construed is unconstitutional.

ARGUMENT AND AUTHORITIES UNDER QUESTION NO. 1

Upon careful review of the legislative history, case law, and

subsequent amendments, it becomes clear that Okla. Stat. Tit. 51, sec. 155(14) (1988), ("the workers' compensation exception") was not intended to bar Petitioners' causes of action.

One must begin the analysis of the legislative history and interpretation of the Oklahoma workers' compensation exception in question today with the nature and underlying purposes of sovereignty. The concept of sovereignty is the underlying premise with respect to the United States Constitution as well as each individual state constitution. Statehood presumes the fundamental right of a people to govern themselves. People have the right to elect those individuals who are charged with the task of enacting laws under

which the people of the particular state choose to be governed. This fundamental right gives shape to the underlying nature and purpose of both federal and state law.

Each state has the right to establish laws through both its judicial and legislative arms which control its citizens and its domestic affairs. Pink v. A.A.A. Highway Express, 1941, 62 S.Ct. 241, 314 U.S. 201, 86 L.Ed 152, (rehearing denied) 62 S. Ct. 477, 314 U.S. 716, 86 L.Ed 570. However, when a state attempts to govern or control individuals or activities outside its boundaries, it is treading on very questionable constitutional ground. A state legislature passes laws and statutes with the primary purpose of

governing **its** citizens and the various domestic affairs which are contained within **its** boundaries. This principle of "sovereignty" is well established in the powers and rights granted to the respective states by both the federal and state Constitutions. Therefore, it must be inferred from the power and privileges given to the states to govern their citizens and internal affairs by the federal government, that any statute enacted by a state has as its intended purpose the control of **its** citizens and the domestic activities and affairs within **its** boundaries. This concept applies equally to the Oklahoma Governmental Tort Claims Act and the subsequent amendments thereto.

Consequently, in the absence of explicit language extending the bar to non-residents or non-employees of Oklahoma, it must be inferred that the Act and amendments thereto were intended to apply only to control the conduct and activity of Oklahoma residents. The vagueness and ambiguity with respect to the identification of the class sought by the Legislature to be barred necessarily requires that Section 155(14) be applied in a manner consistent with the premises that a state enacts laws to govern its own citizens and the activities within its territory. Any attempt to extend the impact of a statute beyond a state's own territory or right to control its own citizens necessarily causes the

constitutionality of that statute to be strictly scrutinized.

From this cautious constitutional premise it is appropriate to now analyze the legislative history and intent of Okla. Stat. Tit. 51, sec. 155(14) (1988). The Oklahoma Supreme Court first shed light on the legislative purpose of same in Jarvis v. City of Stillwater, 669 P.2d 1108 (Okla 1983), a case of first impression involving the workers' compensation exception of the Oklahoma Political Subdivision Tort Claims Act (the predecessor of the current Governmental Tort Claims Act). Section 155(14) then provided that the state was immune from actions based upon **"any claim covered by the Oklahoma Workers' Compensation Act..."** Jarvis

involved an Oklahoma resident who was employed by a private company and was allegedly injured by the City of Stillwater, Oklahoma. The Supreme Court in Jarvis was asked to determine if the workers' compensation exception barred from recovery not only one who, when injured, was a covered employee of the political subdivision sued in tort, but also those who might claim compensation from anyone for the injurious events sought to be addressed. The Jarvis Court held that Section 155(14) only precluded the claims of covered employees of the defending political subdivision. Such ruling is in line with the eight current workers' compensation exceptions which expressly apply only to state employees. Even the

Oregon and West Virginia exceptions must be construed to include only state employees.

By applying the concept of "sovereignty" as outlined above, the Jarvis ruling implicitly covered only Oklahoma residents who were employed by the State of Oklahoma or its applicable subdivision. Petitioners, as Texas residents, were clearly not bound by the 1983 amendment.

Petitioners turn the Court's attention to the next amendment to the workers' compensation exception which occurred upon the enactment of the Government Tort Claims Act. Okla. Stat. Tit. 51 §101, et seq. (1984). That Act was passed in 1984 after the Oklahoma Supreme Court's ruling in Vanderpool v.

State of Oklahoma, 672 P.2d 1153 (1983), wherein it declared the doctrine of sovereign immunity partially abrogated and invited the Legislature to enact a comprehensive tort liability act addressing the immunity of the state and its political subdivisions. The Governmental Tort Claims Act changed the language of the Jarvis workers' compensation exception to include **"any claim covered by any workers' compensation act or any employers' liability act . . ."** This language tracks West Virginia's statute almost verbatim.

As might be expected, the Oklahoma Supreme Court was again called upon to construe the new provision in Huff v. State of Oklahoma, 764 P.2d 183 (Okla.

1988). The Huff Court was asked to resolve whether an intent to change the meaning of Section 155(14) clearly appeared in the post-Jarvis amendment so as to expand the class of claimants who are barred from suing the state to include non-governmental employees protected by their own employers' liability for on-the-job injury or death pursuant to workers' compensation law.

Huff involved an Oklahoma resident, who was not a state employee, killed by an Oklahoma Highway Patrol car while the deceased was acting in the course of his employment with a private company. His wife later sued the State of Oklahoma under the Governmental Tort Claims Act. The trial court rendered judgment for decedent's widow and the Oklahoma

Supreme Court affirmed, holding that the workers' compensation exception as amended after Jarvis did not extend the State's immunity to suits brought by non-employees of the State of Oklahoma.

The Huff Court held that the 1984 amendment did not expand the class of claimants who were barred, but merely modified state immunity to include claims by state government employees which may have an election as to applicable compensation law depending on where the accident occurred. For example, an individual who worked for the State of Oklahoma and who was injured in another state would have the option of electing the workers' compensation law under which to make his claim. The Huff Court held that the

workers' compensation exception as modified by the 1984 amendment allowed any workers' compensation law to trigger immunity, but did not expand the class of claimants to include non-governmental employees. Huff was revisited with the same result in Ingram v. The State of Oklahoma, 786 P.2d 77.

In support of its holding, the Huff Court noted that a compensation claimant is entitled by Okla. Stat. Tit. 85, sec. 44 (1986), to proceed against a third-party tortfeasor who is a stranger to the employment relation. Huff went on to hold that there is no legislative imprimatur for placing the state in a class different from that of any other third-party tortfeasor defending against a claim for injuries or death by one

who, when injured or killed, was in the employment of another. Consequently, the Supreme Court of Oklahoma declined to provide the State additional immunity by expanding the class of claimants barred under the workers' compensation exception to include Oklahoma residents who are non-governmental employees. Of interest here, there was no mention of expanding the exception past the concept of sovereignty and statehood to include non-residents of Oklahoma, such as Petitioners.

In Huff, the Court emphasized its Jarvis decision and held that the post-Jarvis amendment was vague and ambiguous and did not explicitly bar claims from non-governmental employees against a state. In fact, in Footnote 12 to its

Decision, the Court noted that if the State wished to expand the workers' compensation exception to non-governmental employees such could be done by using explicit language like "any person...". However, there was no mention of expanding the exception to include non-residents of Oklahoma. To so expand the exception would violate the very premise upon which the concept of sovereignty is based and would effectively dismantle the right under the United States Constitution of each state to govern itself.

Petitioners now turn the Court's attention to the current workers' compensation exception under Sec. 155 of the Act which was enacted in 1988 and

which forms the sole basis of Oklahoma's defense.

The 1988 post-Huff amendment of the workers' compensation exception provides that the State shall not be liable . . . **"if a loss or claim results from any loss to any person covered by any workers' compensation act or employers' liability act."** It is clear from the legislative history and intent of the workers' compensation exception and the court rulings on various amendments that both the legislature and the Court are hesitant to expand the workers' compensation exception to include non-governmental employees of the State of Oklahoma, much less non-residents covered by any workers' compensation

act. Oklahoma seeks to have this Court make three jumps in one.

The current amendment contains the precise language which the Huff Court held would be necessary to expand the State's immunity to bar non-governmental employees. Such language was found in Footnote 12 to the Huff decision. In that footnote, the Court emphasized that in order to expand the class of claimants who were barred under the workers' compensation exception to include resident non-governmental employees, the Legislature would have to use explicit language outlining the class of claimants who would be barred from bringing suit against the state. The Court suggested that the phrase "any person.." would encompass non-

governmental employees, presumably who resided in Oklahoma. However, there is nothing in the legislative history or prior judicial interpretation to suggest that the exception include other non-Oklahoma residents. In support of this contention, Petitioners ask the Court to consider (1) that both the Jarvis and the Huff decisions strictly construed the amendments before them and declined to speculate as to the meaning intended by the Legislature as to the class of claimants to be barred by the sovereign immunity; (2) that eight of the workers' compensation exceptions currently used in tort claims acts are expressly limited to state employees with the other two being impliedly so limited as well; and (3) the limitation of the

principle of sovereignty recognized by Pink v. A.A.A. Highway Express, supra.

First, while the Huff Court held that the 1984 amendment expanded the workers' compensation portion of Section 155(14) to include any workers' compensation act, the Court intentionally declined a second time to expand the class of claimants barred by the doctrine of immunity because the amended provision was vague and ambiguous and did not contain specific language expanding the class to non-government employees.

It is clear that both the Court and the Legislature have been very hesitant to expand the class of claimants to include non-employees of the State of Oklahoma, much less to non-residents of

Oklahoma. Prior strict construction and a requirement of explicit language of the Oklahoma Supreme Court should apply for the third time in this Courts' construction of the current exception, especially in light of the limitations of sovereignty discussed herein.

Second, the court should take note that the workers' compensation exceptions currently utilized by the United States expressly limit application to state employees. Judicial and legislative procedure dictates that the Oklahoma exception should be so limited as well.

Thirdly, Oklahoma is asking this Court to bar not only non-governmental employees, but also non-resident, non-governmental employees. This request

would require this Court to allow Oklahoma to go beyond its permissible sovereign power to impose its will upon citizens of sister states. Such a leap violates the legislative limitations reflected n Pink v. A.A.A. Highway Express, supra; and requires strict scrutiny of the meaning and constitutionality of the statute in question.

Under the concept of sovereignty, a state has the power to enact laws in order to control its citizens and the activities within its territory. However, when a state attempts to legislate or control citizens or activities of a foreign state, the legislation will be subject to constitutional attack as well as strict

scrutiny with respect to its meaning. See Pink v. A.A.A. Highway Express, supra.

Oklahoma relies upon the language in the current amended workers' compensation exception: ". . . any person under any workers' compensation act. . ." Such language is vague and ambiguous, in light of the Court's requirement of explicit legislative language. There is no language here to clearly and explicitly bar non-residents of Oklahoma. Further, such language exceeds even the broad language of West Virginia's and Oregon's workers' compensation exceptions which fall directly in line with the Huff amendment which was construed to encompass only state employees.

Oklahoma now seeks to expand that concept not only to non-government employees but also to non-residents.

If the Legislature had intended to include non-residents of Oklahoma who are non-governmental employees, it could have done so by using explicit language outlining the class of claimants barred. Nevertheless, even had the language been explicit--for example, "non-residents of the State of Oklahoma whether or not employed by the state"--that would cause the statute to violate the United States Constitution, and conflict with the Texas Constitution.

Based on the ambiguity of the language contained in the current amendment and in light of the concept of sovereignty holding that a state is

presumed to enact laws to control its citizens and the domestic activities within its boundaries, the Legislature, aware of the current judicial construction, intended to expand the class of claimants, if at all, to include only non-governmental resident employees of the State of Oklahoma. Even this interpretation is questionable from a constitutional stand point. However, the Oklahoma Legislature relied upon the language suggested by the Huff Court to do just that. Any further expansion of the workers' compensation exception would be unconstitutional.

RESTATEMENT OF QUESTION NOS. 2 - 5

QUESTION NO. 2:

Whether Okla. Stat. Tit. 51, sec. 155(14) (1988) of the Oklahoma Governmental Tort Claims Act, Okla.

Stat. Tit. 51, sec. 155(14) (1988) violates U.S. Const. art. I, §8, cl. 2 and 3 by creating an undue burden on interstate commerce.

QUESTION NO. 3:

Whether Okla. Stat. Tit. 51, sec. 155(14) (1988) of the Oklahoma Governmental Tort Claims Act violates U.S. Const., amend. XIV, §1 with respect to due process.

QUESTION NO. 4:

Whether Okla. Stat. Tit. 51, sec. 155(14) (1988) of the Oklahoma Governmental Tort Claims Act violates U.S. Const. amend. XIV, §1 and U.S. Const. art. IV, §2, cl. 1 with respect to equal protection.

QUESTION NO. 5:

Whether Okla. Stat. Tit. 51, sec. 155(14) (1988) of the Oklahoma Government Tort Claims Act violates U.S. Const., art. IV, §1 with respect to full faith and credit.

ARGUMENT AND AUTHORITIES UNDER QUESTION NOS. 2 - 5

If this Court holds that Section 155(14) as amended in 1988, includes non-resident, non-governmental employees (Petitioners), then it is faced with a

situation which requires that it declare the workers' compensation exception unconstitutional.

Both the Fourteenth Amendment and Article IV, Section II of the United States Constitution provide a guarantee for interstate travel in the United States. Attorney General of New York v. Soto-Lopez, 106 S.Ct. 2317, 476 U.S. 878, 90 L.Ed.2d. 899, (appeal after remand), 840 F.2d 162, (on remand), 713 F.Supp. 677. The right to travel from state to state is constitutionally protected and may not be restricted by state statute. Rizzon v. Taenzi, 619 F.Supp. 1186 (D.C.N.Y.-1985); Smith v. Pulk, 705 F.2d 1279 (C.A.Okl.1983).

Such provision, if expanded to include non-residents, is

unconstitutional because it restricts interstate travel and places an undue burden on interstate commerce, which is prohibited by Art. I, Sec. VIII, Clause III., of the United States Constitution. The purpose of the Interstate Commerce Clause is to protect the public from a state's burden on the free flow of commerce. The clause limits the power of the states to erect barriers against interstate trade. Lewis v. BT Investments Managers, Inc., 447 U.S. 27, 64 L.Ed.2d 702, 100 S.Ct. 2009. The Court in United States v. Southeastern Underwriters Association, (1944), 64 S.Ct. 1162, 322 U.S. 533, 88 L.Ed. 1440, (rehearing denied), 65 S.Ct. 323, U.S. 811, 89 L.Ed 646, further held that the Interstate Commerce Clause was intended

to empower Congress with both negative authority to prohibit against state regulations of commerce deemed inimical to the national interest, and with positive power to legislate concerning transactions which, reaching across state boundaries, affect the people of more states than one, or to govern affairs which the individual state is not fully capable of governing. Bartlett and Co. Grain v. State Corp. Commission of Kansas, 223 F.Supp. 975, (cert. denied), 380 U.S. 964; Healy v. Beer Institute, Inc., (1989), 109 S.Ct. 2491, 105 L.Ed.2d 275.

In the case at bar, if the 1988 workers' compensation exception is held to bar any person under any workers' compensation act, this Court would be

creating a bullet-proof shield for the State of Oklahoma regardless of the degree of fault of its employees, and regardless of where the act occurs -- so long as there is any workers' compensation coverage available. One can imagine the breadth of this sweeping result by simply placing the site of the accident in Texas, or in Kansas, or even in Utah. The illogic of applying the statute becomes immediately clear where the venue changes, but the law does not. Is Oklahoma immune then if one of its agents strikes and hits a non-resident in another state?

Holding that the exception applies to non-residents of Oklahoma would create an undue burden on interstate commerce by regulating out-of-state

business travel. Considering the fact that thousands of individuals from adjoining states enter and pass through the State of Oklahoma each day for the purpose of conducting business, the vast majority of whom are covered by workers' compensation, these non-residents become defenseless targets for employees of Oklahoma to injure, maim, or even kill them without recourse. If this position is adopted, what chilling effect on interstate commerce will occur?

Under the Commerce Clause analysis, a State's interest in passing legislation affecting commerce, if legitimate, is weighed against the burden that the state law would impose on interstate commerce. The test to determine a statute's validity was

outlined in Hughes v. Oklahoma, (1979), 99 S.Ct. 1727, 441 U.S. 322, 60 L.Ed.2d 250, (on remand), 595 P.2d 1349. See also Maine v. Taylor, (1986), 106 S.Ct. 2440, 91 L.Ed.2d 110, (on remand), 803 F.2d 441. The Hughes Court held that once a state law is shown to discriminate against interstate commerce "either on its face or in practical effect," the burden falls on the state to demonstrate that the statute "serves a legitimate local purpose," and that the purpose could not be served as well by an available nondiscriminatory means. See also, Sporhase v. Nebraska ex rel. Douglas, 458 U.S. 941, 37 L.Ed.2d 1254, 102 S.Ct. 3456 (1982). Basically, the United States Constitution allows a state to pass a law which affects

interstate commerce only if the burden does not exceed the extent of the local benefits and there is not a less burdensome alternative. Aldon, Inc. v. Ryan, 571 F.2d 1159, (cert. denied), 99 S.Ct. 180, 439 U.S. 860, 58 L.Ed.2d 169; Washington State Building AFL-CIO v. Spellman, 518 F.Supp. 928, (affirmed), 684 F.2d 627, (cert. denied), 103 S.Ct. 1891, 461 U.S. 913, 77 L.Ed. 2d 782.

In the case at bar, the discriminatory burden which will be placed on interstate commerce if the workers' compensation provision is expanded to include any resident of any state covered by any workers' compensation act clearly outweighs any local benefit to the State of Oklahoma created by the expansion of the

provision. Such discrimination is shown on the face of the statute as well as through practical application. Additionally, there is an alternative which protects the state's interest and does not unconstitutionally burden interstate commerce. This alternative negates the state's ability to carry its burden under Hughes to show the nonexistence of a viable non-discriminatory alternative.

If the workers' compensation exception is construed to include non-residents of Oklahoma, as Oklahoma desires, businesses would want to avoid the risk of sending their employees through or into the State of Oklahoma for fear that if their employees were injured, their only recourse would be

against the employers themselves. Would the employer who did so incur the obligation of the extra risk to which the employee might be subjected? If any event, the cost of doing business in Oklahoma would increase, thus burdening interstate commerce. Retaliation by the legislatures of Kansas, Texas and other surrounding states would further burden interstate commerce.

Second, the workers' compensation exception of the Oklahoma Governmental Tort Claims Act would violate the due process and equal protection clauses of the Fourteenth Amendment of the United States Constitution if it were expanded to bar all persons from any state covered under any workers' compensation act.

The United States Supreme Court has recognized the limits of Eleventh Amendment immunity when faced with the rights guaranteed to all citizens in the Fourteenth Amendment. Fitzpatrick v. Bitzer, 427 U.S. 445, 96 S.Ct. 2666, 49 L.Ed.2d 614 (1976). Federal Courts have also recognized that statutes such as the Governmental Tort Claims Act of Oklahoma, in which only certain persons have the right to bring suit while declaring that other persons actually aggrieved in suffering damages cannot bring such suits, violates the Fourteenth Amendment. See Doie v. Israel, D.C.R.I. (1973) 358 F.Supp. 1193, (motion denied), 482 F.2d 156, (cert. denied), 94 S.Ct. 2406, 416 U.S. 993, 40 L.Ed.2d 772. This same

principle has been recognized by the Courts of other states. Jordan v. Delta Drilling Company, 541 P.2d 39 (Wyoming 1975).

The workers' compensation provision, if construed as broadly as Oklahoma suggests, would create a disparity between Oklahoma and all other states by allowing Oklahoma to discriminate against citizens of every other state when they traveled into the State of Oklahoma. For example, in the case at bar Petitioners are residents of the State of Texas. Pursuant to the workers' compensation laws of the State of Texas, injured employees of workers' compensation subscribers must look exclusively to the insurance carrier for compensation for injuries sustained on

the job. As a result, the injured employees have no other right against their employers for damages from personal injuries, except where 1) the injury results in death due to gross negligence or 2) the injury is due to an intentional act. Paradissis v. Royal Indemnity Co., 507 S.W.2d 526 (Tex. 1974); Middleton v. Texas Power and Light, 108 Tex. 96, 185 S.W. 556 (1916); Tex. Rev. Civ. Stat. Ann. art. 8308, §4.01. Due to the exclusive nature of the workers' compensation remedy, an employee loses his common law right of action against his employer when he accepts employment under the subscriber. Cohn v. Spinx Industries, Inc., 602 S.W.2d (Tex.Civ.App.-Dallas 1980, writ ref. n.r.e.). However, where some

person other than the subscriber is legally liable to pay damages for the injury, the employee may proceed simultaneously against the workers' compensation carrier and the third-part tortfeasor. Burkhart v. Concho Industrial Supply Co., Inc., 549 S.W.2d 469 (Tex.Civ.App.-Austin 1977, no writ). Therefore, a Texas resident employed by a workers' compensation subscriber is limited to the remedies available to collect for damages caused by his injury within his normal course and scope of business to 1) workers' compensation recovery against his employer and/or 2) common law rights against a liable third-party tortfeasor. This is the deal struck by the Texas Legislature to meet the constraints of the Texas due

process and open courts constitutional provisions. If this Court now holds that the workers' compensation exception bars non-residents of Oklahoma who are covered by workers' compensation of another state from suing the state, then a non-resident is forced to give up the common law rights preserved under the delicate construction because of the §8306 Texas workers' compensation law. Tex. Rev. Civ. Stat. Ann. art. 8306, §3. The Texas worker's intended litigation election by the Texas legislature will have been taken away by the Oklahoma legislature. In effect, Oklahoma's statute amends the Texas compensation scheme, and renders questionable the constitutionality of the Texas compensation statute.

Holding that the exception applies to non-residents of Oklahoma would also create a very unfair and unconscionable result if, for example, a non-resident workers' compensation law allowed for $2.00 a month maximum compensation. In that position the individual has a choice of pursuing workers' compensation at $2.00 a month maximum recovery and/or choosing to sue under his common law rights, rendered negatory under Oklahoma's desired outcome. The individual is effectively left with $2.00 a month compensation. Not only does that result offend public policy, Oklahoma's interpretation of the workers' compensation exception deprives non-residents of a property right without due process and further denies

an individual of equal protection under the law.

For the same reasons, additionally, if Section 155(14), as amended in 1988, is held to bar non-residents of Oklahoma, such provision would violate the Full Faith and Credit Clause of Article IV, Sec. 1 of the United State Constitution. An application of the bar to non-residents would fail to recognize the law of the State of Texas with respect to the election of common law rights and/or workers' compensation benefits in the event of an on-the-job injury to a Texas Plaintiff. The Full Faith and Credit Clause implies that the public acts of every state shall be given the same effect by the courts of another state that they have by law and

usage at home. Chicago, etc. R. Co. v. Wiggins Fairy Co., Mo. 1887, 7 S.Ct. 398, 119 U.S. 622, 30 L.Ed. 519.

Additionally, where the policy of one state statute comes into conflict with that of another, the conflict is to be resolved not by giving automatic effect to the Oklahoma provision, which effectively subordinates Texas statutes to Oklahoma's. Rather, one Court should appraise governmental interests of each jurisdiction and decide this case according to the respective weights of each state's interest. Sheerin v. Steele, Mich. (1957), 240 F.2d 797, cert. denied, 77 S.Ct. 816, 353 U.S. 938, 1 L.Ed.2d 760. By taking away a Texas resident's common law right to sue a liable third-party tortfeasor in the

event of injury (as provided by the Texas workers' compensation act), the Oklahoma statute directly conflicts with the interest of the State of Texas in providing its citizens with a remedy in event of such injury. As a result, the State of Oklahoma discriminates against a Texas resident covered by workers' compensation in Texas. This discrimination -- requiring an individual to give up a right of action which he has under his home state as payment for the right to travel in Oklahoma is unconstitutional.

In a sense, Oklahoma is attempting to determine the extraterritorial effect of its own laws which is clearly prohibited by the Full Faith and Credit Clause. In Thomas v. Washington Gas

Light Co., 100 S.Ct. 2647, 448 U.S. 261, 65 L.Ed.2d 757, (on remand), 149 F.2d 275, the Supreme Court addressed such action and held that to allow a state to exercise the power to determine the extraterritorial effect of its own laws would risk the very kind of parochial encroachment on the interest of other states that the Full Faith and Credit and other provisions of Article IV of the United States Constitution were designed to prevent. As a result, the statute, if given the breadth of application sought by the Oklahoma, would clearly violate the Full Faith and Credit Clause of the United States Constitution.

Fortunately, there are alternatives which provide protection to the State of

Oklahoma while at the same time alleviating the unconstitutional nature of expanding the class of claimants barred under Sec. 155(14) as far as the State wishes. Article XXIII, Sec. VII of the Constitution of Oklahoma provides that the Legislature can place statutory limits on the amount recoverable for personal injury actions. This is an avenue by which the Legislature could provide full faith and credit to the laws of foreign states, equal protection and due process to non-residents who travel into the State of Oklahoma on business and are covered by workers' compensation, while at the same time provide a semi-shield to the State of Oklahoma in the form of a cap upon the amount recoverable for damages. For

instance, if the Governmental Tort Claims Act were amended to bring the workers' compensation exception within the liability limitations now in effect for actions allowed thereunder, (e.g. $100,000.00), then a non-resident would again have the choice of pursuing his common law right against the State of Oklahoma. However, such option, if chosen by the non-resident, would be limited to a certain amount and thus protect the state from unlimited liability. At the same time, the individual would still be able to proceed against his employer as provided by both Texas and Oklahoma workers' compensation law. This scheme would provide equality with respect to Oklahoma residents and non-residents of

Oklahoma, as well as shield the State from unlimited liability for its acts; and at the same time would place a responsibility upon the State to control its employees and hold the State responsible for tortious acts done by its employees. Therefore, two benefits would be derived without the substantial burden on interstate commerce or the constitutional violations as referenced above.

Another alternative would be to amend the provision to fall in line with that of the eight states limiting the workers' compensation exception only to employees of the state. This alternative would benefit a legitimate state interest (double liability as employer and as a governmental entity

under the Act) and at the same time avoid an unconstitutional taking.

Alternatives are looked upon with favor by the courts as evidenced in Kusper v. Pontikes, Ill., (1973), 94 S.Ct. 303, 414 U.S. 51, 38 L.Ed.2d 268. Kusper held that if a state has open to it a less drastic way of satisfying its legitimate interest, it may not choose a legislative scheme that broadly stifles the exercise of fundamental personal liberties. This alternative would satisfy the test in Hughes by providing a way for the State of Oklahoma to constitutionally shield itself from unlimited liability.

CONCLUSION

How far a state can extend its sovereign immunity is a question that

needs to be decided by this Court. Okla. Stat. Tit. 51, sec. 155(14) (1988) does not bar Petitioners' claim against the State of Oklahoma because such exception was not intended to extend to non-resident, non-government employees of the State of Oklahoma. Such exception was intended to be expanded, <u>if at all</u>, to include only non-governmental employees who are residents of the State of Oklahoma. The residency limitation with respect to expansion is supported by the concept of sovereignty as outlined above.

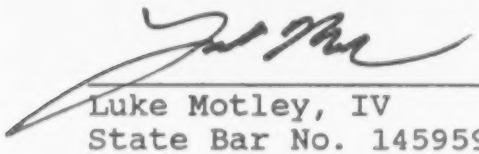
Okla. Stat. Tit. 51, sec. 155(14) (1988) should not, cannot, and will not withstand the constitutional scrutiny to which it will be subjected, should this Court hold that the exception includes

those individuals who do not reside in the State of Oklahoma. As discussed at length, such expansion would be in violation of the very premise upon which our country is founded and upon which each state depends to retain its individual statehood.

WHEREFORE, premises considered, Petitioners pray that this Supreme Court grant their Writ of Certiorari and upon submission of the briefs on the merits and further consideration, Petitioners pray that this Supreme Court declare Okla. Stat. Tit. 51, sec. 155(14) (1988) unconstitutional as currently construed by the State of Oklahoma. Petitioners further pray for such other and further relief to which they may show themselves justly entitled.

Respectfully submitted,

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IN THE SUPREME COURT OF THE
STATE OF OKLAHOMA

JUDITH CHILDS, Executrix of the Estate of JOHN CHILDS, Deceased,	)	
Plaintiff-Appellant,	)	
vs.	)	No. 77,583 cons. w/77,584
STATE OF OKLAHOMA, ex. rel. OKLAHOMA STATE UNIVERSITY	)	
Defendant-Appellee.	)	
RANDY HOOD	)	
Plaintiff-Appellant,	)	
vs.	)	No. 77, 584
STATE OF OKLAHOMA, ex. rel. OKLAHOMA STATE UNIVERSITY	)	
Defendant-Appellee	)	

ON APPEAL FROM THE DISTRICT COURT,
LINCOLN COUNTY
Milton C. Craig, Judge

The trial court gave summary judgment to the State in separate tort actions for harm sustained in the same occurrence by two nongovernmental employees. One of

the actions was for wrongful death and the other for bodily injury. The harm, covered by the workers' compensation law of another state, was occasioned by a negligent act of an Oklahoma state employee while driving a state vehicle. Summary judgment was rested on the State's immunity. The plaintiffs brought separate appeals which were later consolidated for disposition by a single opinion.

SUMMARY JUDGMENTS AFFIRMED

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OPALA, J.

The dispositive issue for review is whether the amended provisions of 51 O.S. Supp. 1988 § 155(14) of the Governmental Tort Claims Act [Tort Claims Act][1] extended the State's immunity to include its liability to persons, not then in the employ of the State of Oklahoma, who *were covered for the injurious event in suit by the workers' compensation regime of any state.* We answer in the affirmative.

I.

THE ANATOMY OF LITIGATION

In 1989 John Childs and Randy Hood [Childs and Hood], both Texas residents, were in Oklahoma while in the course of

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[1] The pertinent terms of 51 O.S. Supp. 1988 § 155(14) are: "The state or a political subdivision shall not be liable if a loss or claim results from: (14) Any loss to any person covered by any workers' compensation act or any employer's liability act:,..."
Subdivision 14 was not affected by the 1991 amendments of §155 (Ok. Sess. L. 1991, Ch. 55, §2, eff. Sept. 1, 1991).

their employment with the same private employer. The men were traveling together in a car driven by Childs when they collided with a vehicle owned by the State of Oklahoma [State] and operated by a State employee. Childs was killed in the accident and Hood received bodily injury.

Hood and Child's widow [together called Plaintiffs] received benefits under the provisions of Texas workers' compensation law.[2] Relying on the

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[2] Tex. Rev. Civ. Stat. Ann. art. 8308-4.01 et seq. (West 1989). Injury sustained in a business trip can be the basis for recovery under Texas compensation laws.
Tex. Rev. Civ. Stat. Ann. art. 8309 §1b (West, 1989), provides that "...[t]ravel by an employee in the furtherance of the affairs or business of his employer shall not be the basis for a claim..., unless the trip...would have been made even had there been no personal or private affairs of the employee.., and unless said trip would not have been made had there been no affairs or business of the employer to be furthered by said trip." The Texas scheme also provides that while compensation benefits will be the exclusive remedy against employers [Tex. Rev. Civ. Stat. Ann. art 8308-4.01 (a)], *the act does not in any way extinguish a plaintiff's remedies against third parties. Tex. Rev. Civ. Stat. Ann. art.*

Governmental Tort Claims Act,[3] the plaintiffs brought separate actions against the State for the wrongful death of Childs and for bodily injury to Hood. The State, acknowledging its employee's negligence,[4] invoked the immunity of § 155(14) [Subdiv. 14].[5] The trial court's summary judgment for the State in both cases rests on the Subdiv. 14 immunity of

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8308-4.01(a) spells out that"... a recovery of workers' compensation benefits under this Act is the exclusive remedy of an employee or legal beneficiary against the employer...for the death of or a work-related injury sustained by a covered employee." Tex. Rev. Civ. Stat. Ann. art 8306 §3 provides in part that "...[n]o part of this Section is intended to lessen or alter the employees [sic] existing rights or cause of action either against his employer, its subscriber, or any third party."

[3] 51 O.S. Supp. 1988 §§ 151 et. seq.

[4] In No. 77,583 (Childs), the State concluded in the pretrial conference order its employee's "negligence, causation, nature and extent of injuries" and that the plaintiff's damage" are in excess of $100,000.00." In No. 77,584 (Hood), the State acknowledged its employee's negligence, but refused to admit the nature and extent of the plaintiff's injury.

[5] For Subdiv. 14 immunity, see 51 O.S. Supp. 1988 §155(14), supra note 1.

the State from responsibility for "*any loss to any person covered by any workers' compensation act*. [6] The plaintiffs brought separate appeals which stand consolidated for disposition by a single opinion.

II.

SUBDIV. 14'S THIRD AMENDMENT OF 1988 CLEARLY WAS INTENDED TO IMMUNIZE THE STATE FROM LIABILITY FOR WRONGFUL DEATH OF, OR BODILY INJURY TO, PERSONS COVERED BY THE WORKERS' COMPENSATION REGIME OF ANY STATE

Relying on Subdiv. 14's third amended test of 1988 vintage, [7] the State asserts that it is immunized from liability if a nongovernmental employee's claim or loss results from an injury that is covered by the compensation law of any state. Because the plaintiffs received

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[6] 51 O.S. Supp. 1988 § 155(14) (emphasis added), supra note 1.

[7] For the text of 51 O.S. Supp. 1988 §155(14), see supra note 1.

benefits under the compensation law of Texas, the State argues, both claims are barred by Subdiv. 14.

The Legislature has enacted three consecutive versions of Subdiv. 14, the most recent in 1988. *This Court has construed the first two of these; the third is before us today.* The issue pressed by the plaintiffs calls for an examination of the 1988 amendment in light of Subdiv. 14's legislative history and of our extant jurisprudence that construes the earlier versions in the factual context of decided cases.

A.

Subdiv. 14-Its First-Generation Text and Meaning

Jarvis v. City of Stillwater[8] held that the text of 51 O.S. 1981 §155(14)[9] did not confer upon the State immunity for harm to nongovernmental employees. There, a private company's employee was injured when he came in contact with high-voltage lines owned and maintained by the City of Stillwater [City]. After receiving compensation benefits from his employer, the employee sued the City for negligence under the Political Subdivisions Tort

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[8] Okl., 669 P.2d 1108 (1983).

[9] 51 O.S. 1981 --155(14) of the Political Subdivisions Tort Claims Act. The terms of Subdiv. 14 provided:
"A political subdivision or an employee acting within the scope of his employment shall not be liable if a loss results from:
14. Any claim covered by the Oklahoma Workers' Compensation Act or any claim covered by the Oklahoma Unemployment Compensation Act."
For the 1984 version of §155(14) see Part IIB, infra; for the 1988 version see supra note 1.

Claims Act [Act]. [10] The 1981 version provided that a political subdivision shall not be liable "if a loss results from...[a]ny claim covered by the Oklahoma Workers' Compensation Act..."[11] We held that in that context the Subdiv. 14 immunity extended solely to tort liability pressed by political subdivision employees covered by the workers' compensation regime.[12] The version of Subdiv. 14 construed in *Jarvis* came to be amended with repeal of the 1981 Act and its replacement in 1984 by

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10 51 O.S. 1981 §151 et. seq.

11 51 O.S. 1981 § 155(14) (emphasis added), supra note 9.

12 The 1981 version of §155(14), which became effective on the day universal compensation coverage came to be extended to municipal workers, was viewed as legislative affirmation that exclusivity of the compensation regime was to govern all covered city employees and as a declaration that compensation's exclusivity constituted a bar to the newly-created tort remedy for harm occasioned by a political subdivision both in its governmental as well as in its proprietary capacity.

the post-*Vanderpool*[13] Claims Act [Tort Claims Act].[14]

B.

Subdiv. 14-Its Second-Generation Text and Meaning

In *Huff vs. State*[15] we examined the 1984 amendment of Subdiv. 14. It provided that the State "shall not be liable if a loss... results from...[a]ny claim covered by any workers' compensation act..."[16]There, an Oklahoma Highway Patrol car struck and killed Huff as he walked upon a marked crosswalk. He was then in the course of his employment with a private company. We held that under

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13 In Vanderpool vs. State, Okl., 672 P.2d 1153, 1156-1157 (1983), we abrogated the doctrine of sovereign immunity and invited the legislature to enact a comprehensive tort liability act that would address the immunity of the State (sovereign) and of its political subdivisions (governmental entities).

14 51 O.S. Supp. 1984 §§ 1551 et seq.

15 Okl, 764 P. 2d 183 (1988).

16 51 O.S. Supp. 1984 § 155(14) (emphasis added).

the 1984 version of Subdiv. 14 the State was not immune from tort liability to a nonstate employee injured on the job. [17] Since the *Jarvis* and *Huff* tested versions of §155(14) did not substantially differ from one another, we could divine no legislative intent to enlarge the earlier version's immunity. The language of the 1984 test fell short of including a nongovernmental worker within the orbit of State immunity.

In sum, our pre-1988 jurisprudence teaches that Subdiv. 14 immunity applied only to claims by governmental employees and its scope stood confined to that

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[17] See in this connection Ingram vs. State, Okl. 786 P.2d 77 (1990). There, husband and wife sued the State for bodily injuries sustained by the wife in a mass shooting incident. Before the mandate had issued in Huff, supra note 15, the trial court concluded that the provisions of 51 O.S. Supp. 1984 § 155(14) immunized the State from legal responsibility for the injurious episode. On appeal, the State conceded that the trial judge's decision came to be rested on an erroneous interpretation of § 155(14) Id. at 79.

afforded by the exclusivity provisions of the Workers' Compensation Act, 85 O.S. Supp. 1984 §12. [18]

C.

Subdiv. 14-Its Third-Generation Text Before Us Today

Subdiv. 14 was last amended in 1988. Its terms provide that neither the State nor a political subdivision shall be liable "if a loss or claim results from...[a]ny loss to any person covered by any workers' compensation act or any employer's liability act..."[19]

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[18] The pertinent terms of 85 O.S. Supp. 1984 §12 are: "The liability prescribed in Section 11 of this title shall be exclusive and in place of all other liability of the employer and any of his employees... for such injury, loss of services, or death, to the employee, or the spouse, personal representative, parents, or dependents of the employee, or any other person.. (emphasis added).

[19] 51 O.S. Supp. 1988 §155(14) (emphasis added), supra note 1. The quoted portions of §155(14) were not changed by the 1991 amendment (Okl. Sess.L. 1991), Ch. 55, §2, eff. Sept. 1, 1991).

The State argues that (1) the 1988 version clearly demonstrates legislative intent to expand the class of claimants under legal disability to recover against the State and (2) all nongovernmental employees covered by the compensation laws of any state are now within the disabled class. This is so because the Legislature replaced the phrase "any claim" found in the earlier text with the phrase "any loss to any person." Support for this view, the State asserts, is extracted from *Huff*, which gave a clear signal to the Legislature that it must use certain language in order to immunize the State from liability for claims brought by any nongovernmental employee covered under the compensation regime of any state. The State directs our attention to a passage in *Huff* that the

1981 version of §155(14) was "devoid of any explicit language immunizing political subdivisions from liability for claims brought by "any person" whose injury or death was covered by our compensation laws. [20] We are urged *that the Legislature adopted the exact language suggested by Huff as necessary to make the Subdiv. 14 immunity all-inclusive.*[21]

We agree that the language added by the 1988 amendment-" *any loss to any person* covered by any workers' compensation act"[22]-- clearly demonstrates an intend to extend

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20 Huff, supra note 15 at 186 n. 12.

21 In Huff, supra note 15, we commented that the legislature had considered but rejected from a proposed Subdiv. 14 text the words "any loss to any claimant." Id. at 186. The word "loss" means death or bodily injury and the phrase "any claimant" would include any aggrieved person who files a claim. We concluded that the Legislature's excision from the proposed act of the words "any loss" any "any claimant" evidenced an intent to keep the reach of immunized liability confined to claims made by the State's and political subdivisions' own employees.

22 51 O.S. Supp. 1988 §155(14) (emphasis added), supra note 1.

the State's Subdiv. 14 immunity to embrace *claims by all nongovernmental employees covered for the injurious event by the workers' compensation regime of any state*.

III.

THE 1988 TEXT OF SUBDIV. 14 PASSES CONSTITUTIONAL MUSTER

Plaintiffs assert that if the trial court's construction of § 155(14) were accepted as correct, Subdiv. 14 would become offensive to the Interstate Commerce, [23] as well as to the Due Process, [24] Equal Protection, [25] and Full Faith and Credit Clauses [26] of the U.S. Constitution.

We recognize at the outset that a strong presumption favors the

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[23] Art. I, –8, cl. 3, U.S. Const.

[24] 14th Amend.., §1, U.S. Const.

[25] 14th Amend., §1, U.S. Const.

[26] Art. 4, §1, U.S. Const.

constitutionality of legislative acts. Legislative bodies are generally "presumed to have acted within their constitutional power despite the fact that, in practice, their laws result in some inequality."[27] The reviewing court will uphold the statute unless it is clearly, palpably and plainly inconsistent with fundamental law. [28]

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[27] Nordlinger vs. Hahn, 505 U.S. _____, 112 S. Ct. 2325, 2331, 120 L. Ed. 2d 1 (1992), quoting from McGowan v. Maryland, 366 U.S. 420, 425-426, 81 S.Ct. 1101, 1005, 6 L. Ed. 2d 393 (1961).

As a general principle of law, the legislature is presumed to have acted in a constitutional manner. Indeed, we are required to presume-until the contrary is shown-that the legislature intended to act within the limitations of the constitution. Oklahoma City News Broadcasters Association vs. Nigh, Okl., 683 P.2d 72, 75 (1984); Black v. Ball Janitorial Serv., Inc., Okl., 730 P.2d 510, 512 (1986); T.I.M. Co v. Oklahoma Land Title Ass'n, Okl 698 P.2d 915, 920 (1985); Kimery v. Pub. Serv. Co., Okl., 622 P.2d 1066, 1069 (1981); City of Duncan vs. Bingham, Okl. 394 P.2d 456, 462 (1964); Application of Oklahoma Turnpike Authority, Okl. 365 P.2d 345, 355 (1961); Jack v. State, 183 Okl. 375, 82 P. 2d 1033, 1036 (1938).

[28] Black vs. Ball Janitorial Service, Inc. supra note 27 at 512.

A.

The Subdiv. 14 Immunity From Liability to Nonresident Nongovernmental Employees Does Not Place An Undue Burden on Interstate Commerce

Plaintiffs argue that barring nonresident nongovernmental employees from suing the State for the harm occasioned by its employees places a burden on interstate commerce by turning out-of-state business travelers present on Oklahoma streets and highways into "defenseless targets" for State employees "to injure, maim, or even kill..without recourse." This, the plaintiffs urge, would produce a chilling effect on interstate commerce.

Generally, when state law is challenged under a Commerce Clause we must inquire (1) whether the challenged statute regulates evenhandedly with only "incidental" effects on interstate

commerce, or discriminates against interstate commerce either on its face or in practical effect; (2) whether the statute serves a legitimate local purpose; and, if so, (3) whether alternative means could equally well promote this local purpose without discriminating against interstate commerce. [29]

It is apparent that Subdiv. 14 regulates evenhandedly and does not discriminate against those in interstate commerce. The 1988 test of Subdiv. 14 immunity applies equally to governmental and nongovernmental employees who are covered either by the workers' compensation law of Oklahoma or by that of a sister state. Subdivision 14

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[29] Hughes vs. Oklahoma, 441 U.S. 322, 336, 99 S.Ct. 1727, 1736, 60 L. Ed. 2d 250 (1979)

prevents all such employees from pressing a claim against the State. [30] It makes no distinction between resident and nonresident claimants. Further, the Governmental Tort Claims Act does not preclude an injured nonresident from seeking redress from his or her state of residence. [31]

Another critical inquiry under the Commerce Clause is whether the practical effect of the state law is to control conduct beyond the boundaries of Oklahoma. [32] There is nothing in the Tort Claims Act that interposes the

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30 See Part II supra.

31 In Huff, supra note 15 at 186-187, the Subdiv. 14 immunity was held to include claims by governmental employees which could be pressed under the compensation laws of any state. There is no indication in Huff, or in any other decision of this Court, which operates to bar injured persons from seeking relief under other states' compensation laws.

32 Healy vs. Beer Institute, Inc., 491 U.S. 324, 336-337, 109 S. Ct. 2491, 2499, 105 L. Ed. 275 (1989)

State's sovereign immunity on acts or omissions which occur outside of Oklahoma. While Subdiv. 14 may have some incidental effect on interstate commerce, it does not, on its face or on its practical effect, discriminate against persons engaged in that enterprise.

Because the Tort Claims Act places no undue burden on interstate commerce, the State is not required to justify the Subdiv. 14 shield from liability either on a legitimate local purpose or on some less discriminatory alternative.

B.

Subdiv. 14 Violates Neither The Due Process Nor the Equal Protection Clause of the Fourteenth Amendment

Plaintiffs assert that the Subdiv. 14 immunity would violate the Due Process and Equal Protection Clauses of the Fourteenth Amendment if it were expanded

to include all persons covered under any state's compensation law.

This court held that sovereign immunity from liability violates neither the Due Process nor the Equal Process Clause of the state or federal constitution. [33] The State is not mandated by the U.S. Constitution to have a governmental tort liability act that creates delictual responsibility co-extensive with that of private tortfeasors. The latter tortfeasors represent an entirely different class.[34] The Equal Protection Clause, while not an absolute guarantee of equality of operation or application of state legislation, is intended to safeguard the

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[33] Neal v. Donahue, Okl., 611 P. 2d 1125, 1129 (1980); Griggs vs. State, ex rel. Okl. Dept. of Transp., Okl., 702 P.2d 1017, 1019 (1985)

[34] Black v. Ball Janitorial Service, Inc., supra note 27 at 513.

quality of governmental treatment against arbitrary discrimination. [35] Because the 1988 Subdiv. 14 amendment made no distinction between resident and nonresident victims of governmental or sovereign negligence no provides for nonresidents a regime that is different from that available to residents, it does survive a constitutional challenge on due process or equal protection grounds.

C.

Subdiv. 14 Does Not Violate the Full Faith and Credit Clause

The purpose of the Full Faith and Credit Clause is to secure recognition for the public acts of other states. [36]

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35 Nordlinger, supra note 27, 505 U.S. at _____, 112 S. Ct. at 2331.

36 Oklahoma applies certain limitations of liability imposed by sister states when the accident occurs in this state. Beard v. Viene, Okl., 826 P.2d 990, 998 (1992). Under the principle of comity proclaimed in Beard, Oklahoma "recognized" the recovery limit on the municipal tort liability of the

Plaintiffs would have this court read the clause as a mandate to apply Texas law to the case at bar as well as that state's counterpart of our exclusivity provisions of 85 O.S.Supp. 1984 §12. [37] A state is neither compelled to subordinate her laws to those of another state [38] nor to substitute the workers' compensation regime of another state for that of her own, even when the other state's law afford an exclusive remedy. [39]

The text of Subdiv. 14 under scrutiny here does not call upon us to

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State of Missouri, thus affording deferential respect to the applicable Missouri statutes.

37 For the pertinent provisions of 85 O.S. Supp. 1984 §12, see supra note. 18.

38 Pink v. A.A.A. Highway Express, 314 U.S. 201, 209, 62 S. Ct. 241, 246-247, 86 L. Ed. 152 (1941).

39 Sade vs. Northern Natural Gas Company, 458 F. 2d 210, 216 (10th Cir. 1972) ; Sheerin vs. Steele, 240 F. 2d 797, 800-802 (6th Cir. 1957) cert. denied, 353 U.S. 938, 77 S. Ct. 816, 1 L. Ed. 2d 750 (1857).

give extraterritorial application to Oklahoma laws in violation of the Full Faith and Credit Clause. The tort claims before us are not governed by Texas law [40] but by Oklahoma's own legal system. Were we to adopt the plaintiffs' argument, the Texas-law version of compensation regime's exclusivity would be imposed extraterritorially upon these two claims for a tort that arose in this State. This we are neither required nor willing to do. [41]Oklahoma Legislature's

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[40] For the provisions of Texas compensation law, see supra note 2.

[41] The plaintiffs' briefs do not suggest, and we find no basis for concluding, that their claims for recovery of damages from harm occurring in Oklahoma have any significant contracts with Texas within the meaning of our conflict-of-laws rule announced in Brickner vs. Gooden, Okl., 525 P.2d 623, 637 (1874), and White v. White, Ok., 618 P. 2d 921, 924 (1980). Brickner and White teach that the parties' rights and liabilities regarding a tort are determined by the substantive law of the state which has the most significant relationship to the occurrence and to the parties. Oklahoma no longer follows the rigidity of lex loci delicti- the traditional choice-of-law

intent to apply extraterritorially the Governmental Tort Claims Act." [42]

Summary judgment affirmed.

ALL JUSTICES CONCUR.

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principal that once called for undeviating application of the substantive law of the place where the tort occurs. For authority that explains and adheres to the now-rejected rule of yore, see Holder vs. Holder, Okl., 384 P. 2d 663, 664 (1963)

[42] Beard, supra note 36 at 997.

§153. Liability-Scope-Exemptions -Exclusivity

A. The state or a political subdivision shall be liable for loss resulting from its torts or the torts of its employees acting within the scope of their employment subject to the limitations and exceptions specified in this act and only where the state or political subdivision, if a private person or entity, would be liable for money damages under the laws of this state. The state or a political subdivision shall not be liable under the provisions of this act for any act or omission of an employee acting outside the scope of his employment.

B. The liability of the state or political subdivision under this act shall be exclusive and in place of all other liability of the state, a political subdivision or employee at common law or otherwise. Laws 1978, c. 203, §3, eff. July 1, 1978. Laws 1984, c. 226, §4, eff. Oct. 1, 1985; Laws 1984, c. 228, §2, eff. July 1, 1984.

§155. Exemption from liability

The state or a political subdivision shall not be liable if a loss or claim results from:

14. Any loss to any person covered by any workers' compensation act or any employer's liability act.

92-2043

(2)

NO._____

Supreme Court, U.S.
FILED
JUN 7 1993
OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1992

JUDITH CHILDS, Executrix of the Estate
of John Childs, Deceased
and
RANDY HOOD,

Petitioners

VS.

STATE OF OKLAHOMA ex rel
OKLAHOMA STATE UNIVERSITY,

Respondent

SUPPLEMENTAL APPENDIX

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IN THE DISTRICT COURT OF LINCOLN COUNTY

STATE OF OKLAHOMA

JUDITH C. CHILDS, Executrix of the Estate of John Childs, deceased, Plaintiff	)	Case No. C-90-214
v.	)	
STATE OF OKLAHOMA, Defendant	)	

ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

This matter came on for hearing on April 17, 1991, upon Defendant, State of Oklahoma's Motion for Summary Judgment against Plaintiff, Judith C. Childs, in her capacity as Executrix of the estate of John Childs, deceased. Plaintiff appeared by counsel, Luke Motley, IV, and Defendant by counsel, Jeff Mixon, Assistant Attorney General.

Having received the Motion and brief in support, Plaintiff's response,

and having heard the argument of counsel, the Court finds that Defendant, State of Oklahoma's Motion for Summary Judgment against Plaintiff, Judith C. Childs, in her capacity as Executrix of the estate of John Childs, deceased, should be, and it hereby is, GRANTED. Accordingly, this cause is DISMISSED. IT IS SO ORDERED.

_____
HON. MILTON C. CRAIG
JUDGE OF THE DISTRICT COURT

APPROVED:

_____
LUKE MOTLEY IV
ATTORNEY FOR PLAINTIFF

_____
JEFF MIXON
ATTORNEY FOR DEFENDANT

(3)

No. 92-2043

IN THE
SUPREME COURT OF THE UNITED STATES

JUDITH CHILDS, Executrix of the Estate
of John Childs, Deceased,
and
RANDY HOOD,

Petitioners

vs.

STATE OF OKLAHOMA, ex rel.
OKLAHOMA STATE UNIVERSITY,

Respondent

Supreme Court, U.S.
FILED
JUL 12 1993
OFFICE OF THE CLERK

**ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF OKLAHOMA**

BRIEF IN OPPOSITION

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July 12, 1993

BEST AVAILABLE COPY

QUESTIONS PRESENTED FOR REVIEW

1. Whether the United States Supreme Court will substitute its interpretation of Oklahoma's Governmental Tort Claims Act for the interpretation by the Oklahoma Supreme Court?
2. Whether a bar to an action in tort against the State of Oklahoma when a potential litigant is covered by worker's compensation unduly interferes with interstate commerce?
3. Whether removal of the ability to sue the State of Oklahoma in tort when a potential litigant is covered by worker's compensation violates due process?
4. Whether creation of two classes of tort litigants -- (1) those affected by torts committed by the State or its political subdivisions and (2) those affected by torts committed by other persons -- violates equal protection?

5. Whether Oklahoma's imposition of its own law in a tort action arising from a traffic accident in Oklahoma involving a State of Oklahoma vehicle and a privately owned Texas vehicle rather than Texas law violates the Full Faith and Credit Clause?

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Restatement (2d) Conflict of Laws
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IN THE
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OCTOBER TERM, 1992

JUDITH CHILDS, executor of
the Estate of John Childs, deceased,
and
RANDY HOOD,

Petitioners,

vs.

STATE OF OKLAHOMA, ex rel.
OKLAHOMA STATE UNIVERSITY,

Respondent.

Summary of Argument

The Petitioners Childs and Hood ("Childs") ask the Court to grant certiorari to the Oklahoma Supreme Court in an attempt to overturn the lower court's ruling allowing the Oklahoma Governmental Tort Claims Act's worker's compensation exemption to bar their tort action against the State of Oklahoma ("State" or "Oklahoma").

Childs predominant argument is that the Oklahoma Supreme Court misconstrued the Oklahoma Legislature's intent in passing the

exemption; however, the State court's interpretation of a matter of solely State law binds the U.S. Supreme Court. The federal court may not substitute its interpretation of Oklahoma law.

Childs' four attempts to convince the Court that certiorari should be granted in the alternative in order to condemn constitutionally Oklahoma's exercise of sovereign power also fail to provide reason for the U.S. Supreme Court to exercise its discretion and take this case.

The worker's compensation exemption does not impermissibly discriminate against interstate commerce. The exemption applies equally to in-state and out-of-state residents. If the exemption affects interstate commerce, it does so only incidentally, while serving the legitimate local concern the State has in avoiding insolvency or burdensome taxes.

Oklahoma's decision to limit who may sue for damages arising from State torts does not deny due process of the law. The ability to sue a sovereign is not a property right; it is, instead, a privilege. Absent a protected interest, Childs cannot support a claim of denial of due process.

The State's classification of tort claimants into two categories -- (1) those injured by government acts and (2) those injured by non-government acts -- does not deny equal protection of the laws. As already noted, the State has a legitimate interest in protecting its treasury to avoid insolvency or burdensome taxation. As a statute neutral both on its face and its application, the Oklahoma Governmental Tort Claims Act classification need only be rationally related to its purpose.

Oklahoma is not required to afford full faith and credit to Texas law when the incident in question occurred wholly within

the State's territory. The negligence of the State driver occurred in Oklahoma and the injuries suffered by the petitioners were incurred in Oklahoma. Having the most significant contacts with the event, Oklahoma is entitled to impose its own law.

Childs does not cite any case or offer any compelling argument which supports the view that Oklahoma somehow has overstepped its sovereign powers by retaining limits on its tort liability. Her request for certiorari should be denied.

Argument

PROPOSITION I: THE U.S. SUPREME COURT IS BOUND TO ACCEPT THE OKLAHOMA SUPREME COURT'S INTERPRETATION OF OKLAHOMA LAW.

Childs asks for certiorari so this Court may substitute its interpretation of a provision of the Oklahoma Governmental Tort Claims Act[1] for the interpretation made by the Oklahoma Supreme Court and applied to

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[1] Okla. Stat. Tit. 51, §§ 151 et seq. (Supp. 1988).

Childs' case. This prayer for substitution will not support certiorari. The U.S. Supreme Court is bound to accept an interpretation of State law by that State's highest court. Hortonville Joint School District No. 1 v. Hortonville Education Association, 426 U.S. 482, 488, 96 S.Ct. 2308, 49 L.Ed.2d 1, 7 (1976).

The Oklahoma Supreme Court is Oklahoma's highest civil court. Okla. Const. art. VII, § 4. That court has interpreted the Oklahoma Governmental Tort Claims Act in a manner that makes the worker's compensation exemption apply to Childs' action. Despite Childs' belief that the State court misunderstood the State legislature's intention in enacting the exemption, the U.S. Supreme Court may not alter the meaning of the statute as expressed by Oklahoma's highest court. Certiorari should not be granted on a perceived misinterpretation of Oklahoma law by the Oklahoma Supreme Court.

PROPOSITION II: OKLAHOMA'S GOVERNMENTAL TORT CLAIMS ACT WORKER'S COMPENSATION EXEMPTION APPLIES EQUALLY TO IN-STATE AND OUT-OF-STATE RESIDENTS, AFFECTING INTERSTATE COMMERCE ONLY INCIDENTALLY.

The test of validity for State statutes regulating interstate commerce is three-fold:

1. Does the challenged law regulate evenhandedly, with only incidental effects on interstate commerce, or does the act discriminate against interstate commerce either on its face or in practical effect?

2. Does the statute serve a legitimate local purpose?

3. If so, could alternative means promote that local purpose without discriminating against interstate commerce?

Hughes v. Oklahoma, 441 U.S. 322, 336, 99 S.Ct. 1727, 1736, 60 L.Ed.2d 250, 262 (1979).

Even when Oklahoma accepts, for purposes of this proposition only, Childs' contention that the worker's compensation exemption

affects interstate commerce, it is clear the statute passes Hughes inspection. The exemption is evenhanded; it denies recovery against the State to all injured persons covered by a worker's compensation act, regardless of whether they engage in interstate or intrastate commerce. A State that places severe limitations on its own citizens does not discriminate against interstate commerce when it imposes identical restrictions on non-residents. See, Sporhase v. Nebraska, ex rel. Douglas, 458 U.S. 941, 955-956, 102 S.Ct. 3456, 3464, 73 L.Ed.2d 1254, 1265 (1982).

As the mighty struggle by Childs to concoct an effect shows, the exemption's impact on interstate commerce is minimal -- certainly less than the effect of any State's highway speed limits or gasoline taxes. The statute complies with the first aspect of the Hughes test.

The various limitations on State tort liability in Oklahoma's Governmental Tort Claims Act protect governmental functions by assuring funds will be available for essential services without intolerable tax burdens or the risk of insolvency. Wilson v. Gipson, 753 P.2d 1349, 1351 (Okla. 1988). Sound financial standing is essential to the health of any State's economy and is, therefore, a legitimate local concern. See, Lewis v. BT Investment Managers, Inc., 447 U.S. 27, 38, 100 S.Ct. 2009, 2016, 64 L.Ed.2d 702, 713 (1980). A State serves a legitimate local purpose when it seeks to conserve its resources so long as it does so in a non-discriminatory manner. See, Hughes, 441 U.S. at 337, 99 S.Ct. at 1737, 60 L.Ed.2d at 262. The exemption complies with the second aspect of the Hughes test.

The third aspect of the Hughes test need not be addressed because it assumes some discrimination against interstate commerce

was found in applying the first two portions. No such discrimination exists here.

The worker's compensation exemption complies with all aspects of Hughes, does not violate the interstate commerce clause and cannot support certiorari as an infringement of that portion of the Constitution.

PROPOSITION III: THE ABILITY TO SUE THE STATE OF OKLAHOMA IN TORT IS A PRIVILEGE RATHER THAN A PROPERTY RIGHT PROTECTED BY THE FIFTH AMENDMENT.

Subject to federal constitutional limitations, States have all the sovereign powers of independent nations. Sturges v. Crowninshield, 17 U.S. (4 Wheat.) 122, 192-193, 4 L.Ed. 529, 548 (1819). As a sovereign, a State may not be sued in its own or another State's courts unless the State has given consent to the suit or has otherwise waived its immunity. Great Northern Life Ins. Co. v. Read, 322 U.S. 47, 51, 64 S.Ct. 873, 88 L.Ed. 1121, 1125 (1944).

By judicial decision, Oklahoma has granted persons afflicted by State acts or omissions the ability to maintain tort actions against the State. Vanderpool v. State, 672 P.2d 1153 (Okla. 1983). But, at the court's invitation, the Oklahoma Legislature has limited that ability. Okla. Stat. Tit. 51, § 152.1 (Supp. 1988). Among the limitations is the provision prohibiting suit against the State by claimants who already are protected by a worker's compensation act. Okla. Stat. Tit. 51, § 155 (14) (Supp. 1988).

A legislature has absolute power to remove the ability to sue; this power is inherent in government as a sovereign. Heller v. United States, 776 F.2d 92, 98 (3rd Cir. 1985), cert. denied 476 U.S. 1105, 106 S.Ct. 1948, 90 L.Ed.2d 358 (1986). Such removal does not violate due process because the ability to sue is a privilege accorded by government, not a property right protected by

the Fifth or Fourteenth Amendments. See, Lynch v. United States, 292 U.S. 571, 581, 54 S.Ct. 840, 78 L.Ed. 1434, 1442 (1934).

Because Oklahoma, as a sovereign, has the power to limit tort actions against itself, the State has not infringed on Childs' due process rights, and Childs' contention on this issue will not support certiorari.

PROPOSITION IV: OKLAHOMA'S CLASSIFICATION OF TORT VICTIMS INTO PERSONS AFFECTED BY GOVERNMENT ACTIONS AND THOSE AFFECTED BY NON-GOVERNMENT ACTIONS REASONABLY PROTECTS THE STATE TREASURY, A LEGITIMATE STATE INTEREST.

Certainly, travel is a basic constitutional right. Memorial Hospital v. Maricopa County, 415 U.S. 250, 94 S.Ct. 1076, 39 L.Ed.2d 306 (1974). But that right does not require, as Childs contends, the State which a person travels into to treat the traveler better than the State's own residents merely because the traveler enjoyed more advantageous treatment where he came

from. Califano v. Gautier Torres, 435 U.S. 1, 4, 98 S.Ct. 906, 55 L.Ed.2d 65, 69 (1978). The Fourteenth Amendment simply requires a State to provide equal protection of its laws to all persons within its jurisdiction. McCoy v. Providence Journal Co., 190 F.2d 760,764 (1st Cir. 1951), cert. denied 342 U.S. 894, 72 S.Ct. 200, 96 L.Ed. 669 (1951).

This concept of equal protection requires uniform treatment of persons standing in the same relationship to the governmental action in question. Reynolds v. Sims, 377 U.S. 533, 565, 84 S.Ct. 1362, 12 L.Ed.2d 506, 529 (1964), rehearing denied 379 U.S. 870, 85 S.Ct. 12, 13 L.Ed.2d 76. Equal protection does not forbid classifications. Nordlinger v. Hahn, ___ U.S.___, 112 S.Ct. 2326, 120 L.Ed.2d 1, 12 (1992).

As long as the classification is not founded on a suspect categorization and does not jeopardize the exercise of a fundamental right, the classification will be upheld if

it rationally furthers a legitimate State interest. Nordlinger, ___ U.S. at ___, 120 L.Ed.2d at 12. The classification of persons injured by government torts as opposed to those injured by non-government torts does not implicate a suspect class. On its face, the classification does not jeopardize any fundamental right, and Childs' argument that the categorization interferes with the right to travel is pure conjecture with no basis in fact. State law implicates the right to travel only when it actually deters such travel, when impeding travel is its primary objective or when it uses any classification which serves to penalize the right. Attorney General of New York v. Soto-Lopez, 476 U.S. 898, 903 106 S.Ct. 2317, 2321, 90 L.Ed.2d 899, 905 (1986). Childs does not demonstrate that Oklahoma's law does any of these things; therefore, the Court will measure the worker's compensation exemption by the rational-basis test.

As stated in Proposition II, concerning interstate commerce, the classification safeguards the public treasury. Wilson, 753 P.2d at 1351. Such State- or municipal-government tort limitations have often been recognized as legitimate and compatible with the Equal Protection Clause. See, e.g., Murphy v. Edmonds, 325 Md. 342, 601 A.2d 102 (1992); State by and through Colorado State Claims Board of the Division of Risk Management v. DeFoor, 824 P.2d 783 (Colo. 1992); M.D. Anderson Hospital and Tumor Institute v. Felter, 837 S.W.2d 245 (Tex. App. 1992); Turrentine v. Brookhaven, Miss. School District, 794 F. Supp. 620 (S.D. Miss. 1992); Imlay v. City of Lake Crystal, 453 N.W.2d 326 (Minn. 1990).

Facially neutral classifications are presumed constitutional. Nordlinger, ___ U.S. at ___, 120 L.Ed.2d at 12. Childs has the burden of showing the unreasonableness of the worker's compensation exemption. Kite v.

Marshall, 661 F.2d 1027, 1030 (5th Cir. 1981), rehearing denied 666 F.2d 591 (1981), cert. denied 457 U.S. 1120, 102 S.Ct. 2934, 73 L.Ed.2d 1333 (1982). Childs cannot meet this burden; therefore, certiorari should be denied.

PROPOSITION V: OKLAHOMA'S LAW APPLIES TO THE INCIDENT THAT GIVES RISE TO THIS ACTION BECAUSE THAT INCIDENT OCCURRED WHOLLY WITHIN OKLAHOMA, GIVING THE STATE THE MOST SIGNIFICANT CONTACT WITH THE EVENT.

In the most convoluted of her arguments, Childs demands the Court restrain Oklahoma from applying its own law to a tort that occurred wholly within its jurisdiction and instead order Oklahoma to subjugate itself to Texas law. Childs' contention that the Full Faith and Credit Clause[2] requires this result ignores the necessity of giving full faith and credit to Oklahoma's law, as well.

The Full Faith and Credit Clause does not require a State to subordinate its laws

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[2] U.S. Const., art. IV, § 1.

on peculiarly domestic matters involving local sovereignty to the statutes of another State. Application of Schatz, 80 Wash.2d 204, 497 P.2d 153 (1972).

Texas and Oklahoma follow the same choice-of-laws rule: The law applied to a specific case is that of the State with the most significant contacts. Brickner v. Gooden, 525 P.2d 632 (Okla. 1974), Gutierrez v. Collins, 583 S.W.2d 312 (Tex. 1979). Here, John Childs and Randy Hood, Texas residents, were killed and injured, respectively, when an Oklahoma State University driver operated his State vehicle negligently in Oklahoma. Petitioners' Brief, pp. 1-2. When the conduct effecting the tort and the injury from that conduct occur in the same State, that State has the dominant interest, and its law is applied. See, Restatement (2d) Conflict of Laws, § 146, Comment d, § 147, Comment d.

Application of simple conflict of laws principles shows the law governing any action arising from the traffic accident is that of Oklahoma, and Childs' argument for dominance of Texas law will not support a full-faith-and-credit challenge. Certiorari, therefore, should be denied.

Conclusion

While many other States' statutes may retain a lesser degree of sovereign immunity from tort liability, Childs has failed to cite a single case either on point or analogous to this one in which either a State court of last resort or a federal appellate court has ruled such immunity unconstitutional. Childs has failed to show that she has any likelihood of success in demonstrating sovereign immunity as retained by Oklahoma is unconstitutional. And Childs is mistaken in the belief that the U.S. Supreme Court may substitute its own

interpretation of State law for the opinion of that State's highest court.

In light of Childs' failure to support the petition for certiorari, the State of Oklahoma asks the Court to deny certiorari.

Respectfully submitted,

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